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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No.

WILLIAM C. CLAY, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

Your petitioner, appellant below, prays that a writ of *certiorari* be issued out of and under the seal of this Court to review the decision of the United States Court of Appeals for the District of Columbia Circuit, entered on October 22, 1953, affirming a judgment of the United States District Court for the District of Columbia dismissing your petitioner's complaint for lack of jurisdiction.

JURISDICTION.

Jurisdiction to review this case upon writ of *certiorari* is conferred upon this Court by Title 28 U.S.C., Sec. 1254 (1).

The opinion of the United States Court of Appeals for the District of Columbia Circuit was entered October 22, 1953.

OPINIONS BELOW.

The opinion of the District Court is set forth on pages 7-9 of the Record.

The opinion of the Court of Appeals is set forth on pages 12-13 of the Record.

QUESTION PRESENTED.

Does the United States District Court for the District of Columbia have jurisdiction under the Tucker Act, 28 U.S.C., 1346(a)(2) to declare an assignment of a patent to the United States Government void, on the ground that it was procured by duress, when the complaint does not seek money damages?

STATUTE INVOLVED.

Pertinent provisions of the Tucker Act of March 3, 1887, (24 Stat. at L. 505, Ch. 359) are set forth in the Appendix to this Argument and Brief.

STATEMENT.

Petitioner invented a de-icing attachment for airplane propellers and held legal title to United States patent No. 2,129,565. The United States Government in Civil Action No. 8,417 prayed that Clay be ordered to transfer the patent to the United States Government. After answer and while the suit was still pending, Clay on the 31st day of March, 1942, executed an assignment of the patent to the United States Government and the suit was dismissed.

By an amended complaint filed on February 4, 1952, in the United States District Court for the District of Columbia, petitioner alleged that the aforesaid assignment of Letters Patent, No. 2,129,565 to the United States was procured by duress and asked for a judgment declaring the assignment null and void. Petitioner did not ask for money damages. (R. 2-6.)

The Government moved to dismiss on the ground that the court was without jurisdiction and on the further ground that the complaint did not state a claim upon which relief may be granted. (R. 4.)

At the conclusion of the argument on the motion, the court, after reserving to petitioner the right to amend if the court found that it did have jurisdiction, took the case under advisement.

A memorandum opinion filed on April 30, 1952, held that the court was without jurisdiction to grant specific relief against the United States; that the facts alleged in the complaint were not sufficient to state a cause of action for duress; and that the complaint did not sufficiently allege that the cause of action had arisen within the period of six years preceding the institution of the instant suit. (R. 7.) An order was filed May 12, 1952, dismissing the action. (R. 9.)

Petitioner, plaintiff below, did not seek to amend the allegations of his complaint as to duress and time but chose to appeal the decision of lack of jurisdiction and ask for a reversal on that point and a remand to the trial court with instructions to allow the plaintiff to amend the complaint as to duress and time.

Upon appeal from the district court's dismissal of the complaint, the Court of Appeals affirmed, per curiam, on the authority of *United States* v. *Jones*, 131 U.S. 1. (R. 12-13.)

SPECIFICATIONS OF ERRORS TO BE URGED.

The Court of Appeals erred as follows:

1. In holding that the Tucker Act permits a suit against the United States only for a money judgment.

2. In holding that the only equitable relief which may be granted in a suit under the Tucker Act is that which is in aid of a claim for money judgment.

REASONS RELIED ON FOR GRANTING THE WRIT.

The decision below is of a question of great and general importance, and of substance relating to the construction and application of a statute of the United States delineating the equitable jurisdiction of United States District Courts and the Court of Claims in Tucker Act suits. The lower court, per curiam, relied on the single authority of a never-reviewed decision of this Court in *United States* v. *Jones,* 131 U.S. 1 (Mr. Justices Miller and Field dissenting), decided in 1889 over sixty-five years ago, which decision constitutes a plain misapprehension of the purpose and effect of the Tucker Act and should now be reviewed.

ARGUMENT AND BRIEF.

This Court should review the Rule it laid down in *United States* v. *Jones* and thoroughly examine the jurisdiction of United States District Courts and the Court of Claims under the Tucker Act as far as equity is concerned.

1. The cited decision of Mr. Justice Bradley in the *Jones* case was based not upon the language appearing in the Tucker Act, but on decisions construing the language of the statute in effect before the passage of the Tucker Act.

2. Prior to the passage of the Tucker Act in 1887, limited jurisdiction had been conferred upon the Court of Claims by the Act of March 3, 1863 (12 Stat. at L. 765). That Act

provided only for actions at law ex contractu for money judgments. It did not use the word "equity" and did not in any manner refer to any equitable jurisdiction of the Court of Claims.

3. The Tucker Act (24 Stat. at L. 505), was a new law and not an amendment of the Act of 1863. It specifically provided in Section 1 that the Court of Claims shall, with some exceptions which are irrelevant to this question, have jurisdiction of all claims

> "in respect of which the party would be entitled to redress against the United States, *either in a court of law, equity or admiralty* if the United States were suable." (Emphasis added.) (App. 8.)

Section 5 of the Act contained these unequivocal words:

> "Such petition shall set forth * * * a succinct statement of the facts upon which the claim is based, the money *or any other thing claimed, or* the damages sought to be recovered and praying the court for a judgment *or decree* upon the facts and law." (Emphasis added.) (App. 8.)

Section 7 provided inter alia:

> "*If the suit be in equity,* or admiralty the court shall proceed with the same according to the rules of such court." (Emphasis added.) (App. 9.)

4. The Tucker Act became law on March 3, 1887 and the *Jones* case, the first such case to be considered after the passage, was decided on May 13, 1889. The question involved was whether the Act of March 3, 1887 authorized suits, not for recovery of money, but for equitable relief by specific performance. This Court speaking through Mr. Justice Bradley held that it did not, placing major reliance upon its decision in *United States* v. *Alire* (6 Wall 573) decided in 1868 and cases following the rule decided in 1870 (*Bonner* v. *United States,* 76 U.S. 9 Wall 156);

1877 (*United States* v. *Gillis,* 95 U.S. 407); and 1880 (*United States* v. *Schurz,* 102 U.S. 378); all decided before March 3, 1887.

5. It is submitted that the dissent in the *Jones* case of Mr. Justices Miller and Field stated the correct rule wherein they said:

> This act was evidently intended to confer a new and important jurisdiction upon the Court of Claims, and a concurrent jurisdiction to a limited extent, in the same class of cases, upon the Circuit and District Courts of the United States. I can see no other possible object in that part of the statute which confers this new jurisdiction by the use of language which for the first time in the history of that court authorizes it to take cognizance of claims where the party would be entitled to redress against the United States, either in a court of law, equity or admiralty, if the United States were suable, than to make them suable in such cases. To hold that the distinct grant of power here provided for is controlled by the fact that this court has under former statutes decided that it did not then exist, is simply to nullify this new grant of power.
>
> The manifest purpose of this new Act was to confer power which the Court of Claims did not previously have, and to authorize it to take jurisdiction of a class of cases of which it had not cognizance before. To say that under such circumstances the new statute is to be crippled and rendered ineffectual in the only new feature which it has, in regard to the jurisdiction of that court, is in my mind a refusal to obey the law as made by Congress in the matter in which its power is undisputed.
>
> It is clear to me that Congress intended by this Act to enlarge very materially the right of suit against the United States, to facilitate this right by allowing suits to be brought in the Circuit and District Courts where the parties resided, and that it also designed to enlarge the remedy in the Court of Claims to meet all such cases in law, equity and admiralty, against the United States, as would be cognizable in such courts against individuals.

6. The decision in the *Jones* case completely ignores the words "or any other thing claimed" in Section 5 of the Act. It is an elementary rule of construction that Congress does not use words idly and effect must be given to their use and meaning.

7. This Court has fairly recently ruled that if a former line of decisions are untenable or erroneous, it may correct the same upon a showing of such error. (*Smith* v. *Allwright*, 321 U. S. 649 at Note 10.)

CONCLUSION.

Your petitioner respectfully submits that the writ of *certiorari* should issue to the end that this Court may review the decision of the United States Court of Appeals for the District of Columbia Circuit in the instant case and its own decision in the *Jones* case and determine whether the Tucker Act conferred jurisdiction upon the United States District Court for the District of Columbia to declare an assignment of a patent to the United States void on a complaint that prays only that and does not seek money damages.

Respectfully submitted,

BYRON N. SCOTT,
Attorney for Petitioner,

APPENDIX.

Statutes Involved in Argument.

1. The Tucker Act, being in part as follows:

Sec. 1. That the Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon the Constitution of the United States, or any law of Congress, except for pensions, or upon any regulation of an executive department, or upon any contract, expressed or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States, either in a court of law, equity or admiralty if the United States were suable.

Sec. 2. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claims exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this Act shall be tried by the court without a jury.

Sec. 5. That the plaintiff in any suit brought under the provisions of the second section of this Act shall file a petition, duly verified with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law.

Sec. 7. That it shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth

the specific findings by the court of the facts wherein and the conclusions of the court upon all questions of law involved in the case, and to render judgment thereon. If the suit be in equity, or admiralty the court shall proceed with the same according to the rules of such courts.

Sec. 9. That the plaintiff or the United States, in any suit brought under the provisions of this Act, shall have the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made, and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects, and as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 543

WILLIAM C. CLAY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the District Court for the District of Columbia (R. 7-9) and of the Court of Appeals for the District of Columbia Circuit (R. 12-13) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 22, 1953 (R. 14). The petition for a writ of certiorari was filed on January 20,

1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a district court has jurisdiction under the Tucker Act to entertain a complaint against the United States seeking only specific relief and no money judgment.

2. Whether, assuming the district court had such jurisdiction, petitioner's allegations of duress stated a claim upon which relief could be granted.

3. Whether, assuming the complaint stated a cause of action, it was nevertheless barred by the six-year limitation provision in 28 U.S.C. 2401(a).

STATUTES INVOLVED

1. 28 U.S.C. 1346 provides in pertinent part:

> **§ 1346. United States as defendant.**
>
> (a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * * * *
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

2. 28 U.S.C. 2401 provides in pertinent part:

> **§ 2401. Time for commencing action against United States.**

> (a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. * * *

STATEMENT

Petitioner instituted this proceeding on December 17, 1951 (R. 2). As amended on February 4, 1952, the complaint, which was captioned "Complaint to Set Aside Patent Assignment" and invoked the district court's jurisdiction under the Tucker Act, "Title 28, Section 1346(a)(2), of the United States Code" (R. 2, 5), may be summarized as follows:

Petitioner entered Government employment on July 2, 1928, as a junior aeronautical engineer with the National Advisory Committee for Aeronautics (R. 5). "He worked in said capacity solely as a junior engineer, and at no time did his contract of employment contemplate any of his attention to or consideration of any invention" (R. 5). On September 6, 1938, while still in the employ of the National Advisory Committee for Aeronautics, petitioner was granted Letters Patent No. 2,129,565 for a De-Icing Attachment for Airplane Propellors (R. 5). On or about November 15, 1939, the United States, allegedly "without any basis in law or in fact," demanded that he assign to it all right, title, and interest in and to this patent (R. 5). He refused, and on September 19, 1940, the Government brought suit against him in the United States District Court for the District of Columbia to establish title to the patent in the Government and to require

him to transfer this title to the United States (R. 5).

Petitioner further alleged that following his answer on November 8, 1940 (R. 5), the United States admonished him that if the Government won the case, he would lose the patent, and that if he won, the Government "would then appeal the decision to the highest court necessary, thereby devolving a great and insufferable expense upon" him (R. 6). Thereafter, on March 31, 1942, "due to his inability to have financed said purportedly prohibitive costs, the physical illness of his then Counsel, fear motivated by the intervention of the Department of Justice, and as a result of coercion and economic duress, all of which resulted from actions of" the Government, he assigned the patent to the United States without any consideration, and the Government dismissed its action against him (R. 6). Based on these allegations, the complaint prayed for a judgment invalidating the assignment (R. 6).[1]

The district court granted the Government's motion to dismiss the complaint (R. 4), holding that under the Tucker Act it was "without jurisdiction to grant specific relief against the United States, its jurisdiction being limited to judgment for damages arising out of a contract, where such damages will not exceed the sum of $10,000" (R. 8). The court further held that the complaint failed to state a cause of action since the alleged duress consisted merely of a statement by the Government that it intended to take action which it

[1] The original complaint had also prayed that the Government be ordered to effect a reassignment of the patent (R. 4), but this prayer was omitted in the amended complaint (R. 6).

legally had a right to take (R. 9). Finally, the court ruled that neither the original nor the amended complaint stated a cause of action arising within six years prior to the institution of the suit (R. 9). The court of appeals (Clark, Bazelon, and Fahy, JJ) affirmed in a *per curiam* opinion (R. 12-13).

ARGUMENT

The courts below were clearly correct in holding that there is no jurisdiction to render specific relief against the United States under the Tucker Act. Furthermore, as held by the district court, even if the Tucker Act might be construed to confer jurisdiction to render the relief sought, the complaint failed to state a case of duress by the Government which could justify invalidation of the assignment. Finally, even if a cause of action had arisen in 1942, the instant suit, instituted ten years later, was barred by the six-year statute of limitations in 28 U.S.C. 2401(a).

1. Petitioner contends that 28 U.S.C. 1346(a)(2), *supra,* p. 2 (the 1948 codification of the Tucker Act, 24 Stat. 505, as amended), confers jurisdiction on the district courts of the United States to render specific relief (here, invalidation of an assignment) against the United States, even though this relief is the sole relief sought and is not ancillary to a prayer for a money judgment. But the law is well settled to the contrary. It has been "uniformly held, upon a review of the statutes creating the court [the Court of Claims] and defining its authority, that its jurisdiction is confined

to the rendition of money judgments in suits brought for that relief against the United States * * *." *United States* v. *Sherwood,* 312 U.S. 584, 588. See also *United States* v. *Jones,* 336 U.S. 641, 670; *United States* v. *Jones,* 131 U.S. 1; *Larson* v. *Domestic and Foreign Corp.,* 337 U.S. 682, 704. And the jurisdiction of the district courts under the Tucker Act is no different from that of the Court of Claims, for "the Tucker Act did no more than authorize the District Court to sit as a court of claims and * * * the authority thus given to adjudicate claims against the United States does not extend to any suit which could not be maintained in the Court of Claims." *United States* v. *Sherwood, supra,* at 591. See also *United States* v. *Jones,* 131 U.S. 1, 19; *National Insurance Co.* v. *Tidewater Co.,* 337 U.S. 582, 592-3; *Hill* v. *United States,* 149 U.S. 593, 598.

In *United States* v. *Jones,* 131 U.S. 1, the first decision of this Court involving an issue as to the scope of the jurisdiction conferred on the Court of Claims and the district courts by the Tucker Act, the Court rejected the very contention raised by petitioner here. In that case, as here, it was argued that the language of the Act conferred jurisdiction on the Court of Claims and the district courts to render general equitable relief against the United States. However, this Court ruled that Tucker Act jurisdiction was restricted to the redressing of money demands against the United States and that courts acting under the Act were not empowered to decree specific equitable relief against the Govern-

ment. While the Court went on to recognize that under the Tucker Act the Government did consent to a limited equity jurisdiction, the Court held that the language of the Act as a whole made it clear that such jurisdiction was intended only to include claims for money arising out of equitable demands. 131 U.S. at 18. The subsequent decisions of this Court are fully in accord with this limitation. See cases cited *supra*, p. 6.

The only situations in which specific relief may be granted under the Tucker Act are those in which such relief is sought merely as an incident to an ultimate money judgment. For example, this Court has held that where reformation of a contract is a necessary incident to a Tucker Act suit for money damages, the district court may reform the contract even though a request for a reformation alone would be beyond the court's jurisdiction. *United States* v. *Milliken Imprinting Co.*, 202 U.S. 168, 174. The Court of Claims and the district courts have consistently adhered to this limitation in exercising Tucker Act jurisdiction, granting equitable relief in aid of a money demand [2] but refusing to entertain independent requests for

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[2] *Milliken Imprinting Co.* v. *United States*, 40 C. Cls. 81, reversed on other grounds 202 U.S. 168; *Cramp and Sons Ship and Engine Bldg. Co.* v. *United States*, 46 C. Cls. 521, affirmed 239 U.S. 221; *Admiral Oriental Line* v. *United States*, 86 F. 2d 201 (C.A. 2); *Iowa-Wisconsin Bridge Co.* v. *United States*, 114 C. Cls. 464; *Harrison Engineering and Const. Co.* v. *United States*, 107 C. Cls. 205; *South Boston Iron Works* v. *United States*, 34 C. Cls. 174; *United States Cartridge Co.* v. *United States*, 62 C. Cls. 214.

specific relief against the United States.[3] Petisioner's action here is clearly within the latter category. He admittedly has not requested money damages (see Pet. 3), but seeks only to have the 1942 assignment invalidated. Both courts below properly held that such a request solely for specific relief was beyond the district court's jurisdiction under the Tucker Act.

2. Even if the district court had jurisdiction to grant the relief sought by petitioner, the complaint was properly dismissed for failure to state a claim upon which relief could be granted. The request for rescission of the 1942 patent assignment was grounded on alleged duress on the Government's part in procuring the assignment. This duress consisted of purported statements by Government representatives advising petitioner that the Government intended to press the litigation it was legally entitled to maintain, and apprising him of the potentially heavy costs he might incur in the course of these legal proceedings. In essence, petitioner's prayer for rescission was based upon the assertion that because of his reluctance to incur these costs he assigned his rights and interests in the patent to the Government.

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[3] *Lynn* v. *United States*, 110 F. 2d 586, 588 (C.A. 5) (prayer for reformation of deed and a declaratory judgment would have to be ignored even though reformation of a contract and a money judgment could be decreed); *United States* v. *Turner*, 47 F. 2d 86 (C.A. 8) (bill to quiet title, beyond jurisdiction); *Blenkner* v. *United States*, 65 C. Cls. 18 (no jurisdiction to grant right of discovery); *Leather* v. *United States*, 61 C. Cls. 388 (no jurisdiction to set aside a fraudulent conveyance of land).

The district court was clearly correct in holding that the complaint failed to allege the kind of duress which could warrant rescission of the assignment. For "the expense and annoyance of litigation is 'part of the social burden of living under government.'" *Petroleum Exploration, Inc.* v. *Public Service Comm'n,* 304 U.S. 209, 221-222, quoting *Bradley Lumber Co.* v. *Labor Board,* 84 F. 2d 97, 100 (C.A. 5). See also *Myers* v. *Bethlehem Corp.,* 303 U.S. 41, 51-52. And so it is firmly established that a threat to resort to civil litigation is not "duress" justifying equitable rescission of a contract even though the threatened suit would not be successful, provided the threat is made in the belief that a cause of action does exist. *Automatic Radio Mfg. Co.* v. *Hazeltine Research,* 176 F. 2d 799 (C.A. 1), affirmed, 339 U.S. 827; *In re Prima Co.,* 98 F. 2d 952 (C.A. 7), certiorari denied *sub nom. Keig* v. *Harris Trust and Savings Bank,* 305 U.S. 658; *Manigault* v. *S. M. Ward and Co.,* 123 Fed. 707 (C.C. D.S.C.), affirmed *sub nom. Manigault* v. *Springs,* 199 U.S. 473.

3. Finally, petitioner's suit was barred by the statute of limitations. The alleged coerced assignment of the patent to the Government, which forms the basis for petitioner's complaint, took place on March 3, 1942, ten years before this action to invalidate the assignment was commenced. 28 U.S.C. 2401(a) permits the maintenance of suits against the United States only on claims arising

within six years prior to the institution of the proceeding.[4]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MELVIN RICHTER,
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FEBRUARY 1954.

[4] This six year limitation is jurisdictional (*Munro* v. *United States*, 303 U.S. 36; *Edwards* v. *United States*, 163 F. 2d 268 (C.A. 9)) and need not be pleaded as a defense to a Tucker Act suit against the United States. *Carpenter* v. *United States*, 56 F. 2d 828 (C.A. 2); *Gans S.S. Line* v. *United States*, 105 F. 2d 955 (C.A. 2), certiorari denied, 308 U.S. 613, cf. *Finn* v. *United States*, 123 U.S. 227; *Phillips* v. *Grand Trunk Ry.*, 236 U.S. 662.

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